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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SHELBY SKELTON, individually, and) on behalf of all others similarly situated,) Plaintiffs,) vs.) CARE.COM, INC.; and DOES 1) through 10, inclusive,) Defendants.)) Case No. <u>'20CV2086 AJB DEB</u>) <u>CLASS ACTION</u>) COMPLAINT FOR:) 1. NEGLIGENT VIOLATIONS OF) THE TELEPHONE CONSUMER) PROTECTION ACT [47 U.S.C.) §227(b)]) 2. WILLFUL VIOLATIONS OF) THE TELEPHONE CONSUMER) PROTECTION ACT [47 U.S.C.) §227(b)]) <u>DEMAND FOR JURY TRIAL</u>
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1. SHELBY SKELTON (“Plaintiff”) bring this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant CARE.COM, INC. (hereinafter “Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to itself and its own acts and experiences, and, as to all other

1 matters, upon information and belief, including investigation conducted by its
2 attorneys.

3 2. The TCPA was designed to prevent calls and messages like the ones
4 described within this complaint, and to protect the privacy of citizens like Plaintiff.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how creditors and telemarketers may call them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls are
11 not universally available, are costly, are unlikely to be enforced, or place an
12 inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this
13 end, Congress found that

14 [b]anning such automated or prerecorded telephone calls to the
15 home, except when the receiving party consents to receiving the
16 call or when such calls are necessary in an emergency situation
17 affecting the health and safety of the consumer, is the only
18 effective means of protecting telephone consumers from this
19 nuisance and privacy invasion.

20 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
21 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
22 purpose).

23 4. Congress also specifically found that “the evidence presented to the
24 Congress indicates that automated or prerecorded calls are a nuisance and an
25 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
26 *Mims*, 132 S. Ct. at 744.

27 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
28 TCPA case regarding calls to a non-debtor similar to this one:

1
2 The Telephone Consumer Protection Act ... is well known for its
3 provisions limiting junk-fax transmissions. A less-litigated part of the
4 Act curtails the use of automated dialers and prerecorded messages to
5 cell phones, whose subscribers often are billed by the minute as soon
6 as the call is answered—and routing a call to voicemail counts as
7 answering the call. An automated call to a landline phone can be an
8 annoyance; an automated call to a cell phone adds expense to
9 annoyance.

10 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

11 6. The Ninth Circuit recently affirmed certification of a TCPA class case
12 remarkably similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, __
13 F.3d __, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

14 **Jurisdiction and Venue**

15 7. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
16 an individual residing in California, seeks relief on behalf of a Class, which will
17 result in at least one class member belonging to a different state than that of
18 Defendants, a company based in Massachusetts and incorporated in Delaware and
19 which does business within and throughout California. Plaintiff also seeks
20 \$1,500.00 in damages for each call in violation of the TCPA, which, when
21 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
22 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
23 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
24 present, and this Court has jurisdiction.

25 8. Venue is proper in the United States District Court for the Southern
26 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants do
27 business within the State of California and Plaintiff resides within the County of
28 San Diego.

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PARTIES

9. Plaintiff SHELBY SKELTON is an individual living in Los Angeles County, California, and is a “person” as defined by 47 U.S.C. § 153 (39).

10. Defendant CARE.COM, INC. is a service company that connects consumers with caregivers, based in Massachusetts and incorporated in Delaware, and is a “person” as defined by 47 U.S.C. § 153 (39).

11. The above named Defendant, and its subsidiaries and agents, are collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

12. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

Factual Allegations

13. On or about August 19, 2020 Plaintiff received a series of unsolicited text messages from Defendants on Plaintiff’s cellular telephone number ending in - 7330 in an attempt to solicit Plaintiff to purchase Defendants’ services.

14. During this time, Defendants began to use Plaintiff’s cellular telephone for the purpose of sending Plaintiff spam advertisements and solicitation offers via text message.

15. The calls and text message placed to Plaintiff's cellular telephone were placed via Defendants' *SMS Blasting Platform*, i.e., an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

16. The telephone number that Defendants, or their agent, called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

17. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

18. Plaintiff has never provided her cellular telephone number to Defendants for the purposes of solicitation.

19. In addition, on at least one occasion, Plaintiff answered the telephone and told Defendant to stop calling her. Accordingly, Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

20. These telephone calls by Defendants, or its agents, violated 47 U.S.C. § 227(b)(1).

CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes").

22. The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any unsolicited solicitation/telemarketing text messages from Defendants to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such

1 person had not previously consented to receiving such
2 calls within the four years prior to the filing of this
3 Complaint

4 23. The class concerning the ATDS claim for revocation of consent, to the
5 extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined
6 as follows:

7 All persons within the United States who received any
8 solicitation/telemarketing text messages from Defendant
9 to said person’s cellular telephone made through the use
10 of any automatic telephone dialing system or an artificial
11 or prerecorded voice and such person had revoked any
12 prior express consent to receive such calls prior to the
calls within the four years prior to the filing of this
Complaint.

13 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
14 of all persons within the United States who received any solicitation text messages
15 from Defendant to said person’s cellular telephone made through the use of any
16 automatic telephone dialing system or an artificial or prerecorded voice and such
17 person had not previously not provided their cellular telephone number to
18 Defendant within the four years prior to the filing of this Complaint.

19 25. Plaintiff represents, and is a member of, The ATDS Revocation Class,
20 consisting of all persons within the United States who received any
21 solicitation/telemarketing text messages from Defendant to said person’s cellular
22 telephone made through the use of any automatic telephone dialing system or an
23 artificial or prerecorded voice and such person had revoked any prior express
24 consent to receive such calls prior to the calls within the four years prior to the filing
25 of this Complaint.

26 26. Defendant, its employees and agents are excluded from The Classes.
27 Plaintiff does not know the number of members in The Classes, but believes the
28 Classes members number in the thousands, if not more. Thus, this matter should be

1 certified as a Class Action to assist in the expeditious litigation of the matter.

2 27. The Classes are so numerous that the individual joinder of all of its
3 members is impractical. While the exact number and identities of The Classes
4 members are unknown to Plaintiff at this time and can only be ascertained through
5 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
6 The Classes includes thousands of members. Plaintiff alleges that The Classes
7 members may be ascertained by the records maintained by Defendant.

8 28. Plaintiff and members of The ATDS Class and The ATDS Revocation
9 Class were harmed by the acts of Defendant in at least the following ways:
10 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
11 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
12 members to incur certain charges or reduced telephone time for which Plaintiff and
13 ATDS Class and ATDS Revocation Class members had previously paid by having
14 to retrieve or administer messages left by Defendant during those illegal calls, and
15 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
16 members.

17 29. Common questions of fact and law exist as to all members of The
18 ATDS Class which predominate over any questions affecting only individual
19 members of The ATDS Class. These common legal and factual questions, which
20 do not vary between ATDS Class members, and which may be determined without
21 reference to the individual circumstances of any ATDS Class members, include, but
22 are not limited to, the following:

- 23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendant sent any telemarketing/solicitation text
25 message (other than a call made for emergency purposes or
26 made with the prior express consent of the called party) to a
27 ATDS Class member using any automatic telephone dialing
28 system or any artificial or prerecorded voice to any telephone

1 number assigned to a cellular telephone service;

2 b. Whether Plaintiff and the ATDS Class members were damaged
3 thereby, and the extent of damages for such violation; and

4 c. Whether Defendant should be enjoined from engaging in such
5 conduct in the future.

6 30. As a person that received numerous telemarketing/solicitation calls
7 from Defendant using an automatic telephone dialing system or an artificial or
8 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
9 claims that are typical of The ATDS Class.

10 31. Common questions of fact and law exist as to all members of The
11 ATDS Revocation Class which predominate over any questions affecting only
12 individual members of The ATDS Revocation Class. These common legal and
13 factual questions, which do not vary between ATDS Revocation Class members,
14 and which may be determined without reference to the individual circumstances of
15 any ATDS Revocation Class members, include, but are not limited to, the
16 following:

17 a. Whether, within the four years prior to the filing of this
18 Complaint, Defendant sent any telemarketing/solicitation text
19 messages (other than a call made for emergency purposes or
20 made with the prior express consent of the called party) to an
21 ATDS Revocation Class member, who had revoked any prior
22 express consent to be called using an ATDS, using any
23 automatic telephone dialing system or any artificial or
24 prerecorded voice to any telephone number assigned to a
25 cellular telephone service;

26 b. Whether Plaintiff and the ATDS Revocation Class members
27 were damaged thereby, and the extent of damages for such
28 violation; and

1 c. Whether Defendant should be enjoined from engaging in such
2 conduct in the future.

3 32. As a person that received numerous telemarketing/solicitation calls
4 from Defendant using an automatic telephone dialing system or an artificial or
5 prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is
6 asserting claims that are typical of The ATDS Revocation Class.

7 33. Plaintiff will fairly and adequately protect the interests of the members
8 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
9 class actions.

10 34. A class action is superior to other available methods of fair and
11 efficient adjudication of this controversy, since individual litigation of the claims of
12 all Classes members is impracticable. Even if every Classes member could afford
13 individual litigation, the court system could not. It would be unduly burdensome to
14 the courts in which individual litigation of numerous issues would proceed.
15 Individualized litigation would also present the potential for varying, inconsistent,
16 or contradictory judgments and would magnify the delay and expense to all parties
17 and to the court system resulting from multiple trials of the same complex factual
18 issues. By contrast, the conduct of this action as a class action presents fewer
19 management difficulties, conserves the resources of the parties and of the court
20 system, and protects the rights of each Classes member.

21 35. The prosecution of separate actions by individual Classes members
22 would create a risk of adjudications with respect to them that would, as a practical
23 matter, be dispositive of the interests of the other Classes members not parties to
24 such adjudications or that would substantially impair or impede the ability of such
25 non-party Class members to protect their interests.

26 36. Defendant has acted or refused to act in respects generally applicable
27 to The Classes, thereby making appropriate final and injunctive relief with regard
28 to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

37. Plaintiffs repeat and incorporates by reference into this cause of action the allegations set forth above.

38. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

39. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

40. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

41. Plaintiffs repeat and incorporates by reference into this cause of action the allegations set forth above.

42. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

43. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiffs and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

44. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendants for the following:

- a. That this action be certified as a class action on behalf of The Classes and Plaintiff be appointed as the representative of The Classes;
- b. As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*;
- c. As a result of Defendant's willful and/or knowing violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*;
- d. For actual damages according to proof;
- e. For reasonable attorneys' fees and costs of suit;
- f. For prejudgment interest at the legal rate; and,
- g. Any and all other relief that the Court deems just and proper.

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JURY DEMAND

45. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiffs are entitled to, and demands, a trial by jury.

Respectfully submitted this 23rd day of October, 2020.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiffs